

REMARKS

By the above actions, claims 9, 20 and 21 have been amended. In view of the above amendments and the following remarks, further consideration of this application is requested.

The claims have been rejected under 35 USC § 112, first paragraph for failing to meet the written description requirement. However, this rejection is based on contrived reasoning that is inconsistent with a proper interpretation of claim 9. That is, the Examiner's assertion that a reflective material, such as the disclosed "vacuum metalized aluminum or other materials with reflecting properties" is an insulating material is contrary to any established definition as to what constitutes an insulating material. Likewise, no one of ordinary skill in the art would consider "air" to be a "material" so that, even though air has insulating properties, it is *not* an insulating *material*. Furthermore, the Examiner's position ignores the fact that the specification of this application excludes air from the category of insulating materials by the statement in the paragraph spanning pages 10 and 11 of the specification as filed (paragraph [0048] of the application as published) that the disclosed "stationary air layer acts as a very good insulating layer and it ***replaces the insulating materials*** used so far in this region." Thus, this rejection is improper. However, to advance prosecution, the phrase at issue in this rejection has been changed to "said space being otherwise free of insulating materials" to make it clear that nothing insulative is disposed between the walls other than the static air space (the reflective layer not being reflective as noted above).

Claim 9 was objected to and the error noted by the Examiner has been corrected so that this objection should now be withdrawn

Claims 20 and 21 were rejected under 35 USC § 112, second paragraph. In connection with the use of the term "vertical" in claim 20, as can be seen from the accompanying extracts from Webster's New World College Dictionary, Copyright 2005 by Wiley Publishing, Inc., Cleveland, Ohio and Webster's New World Roget's A-Z Thesaurus, Copyright 1999 by Wiley Publishing, Inc., Cleveland, Ohio, the word "vertical" is also synonymous with the word "perpendicular" and it was in that sense that it was used in claim 20. However, in view of the Examiner's confusion in this respect, the term vertical has been deleted. With regard to claim 21, the antecedent basis problem has been corrected by

changing of the dependency of this claim to claim 20. Therefore the indefiniteness rejection should be withdrawn and such action is now requested.

Claims 9-14, 17 and 18 have been rejected under 35 USC § 102 as being anticipated by the Saalfeld German reference while claim 15 was found to be unpatentable over this reference. Furthermore, claim 12 was also rejected under 35 USC § 103 as being unpatentable over Saalfeld when viewed in combination with the Kotrotsios patent. These rejections are inappropriate as to the claims as finally rejected due to the misinterpretation of the Saalfeld reference by the Examiner and clearly do apply to the claims as now presented for the following reasons.

In particular, there is absolutely no basis for the Examiner's assertion that air layer 3, 3' of Saalfeld is a "stationary" air layer. To the contrary, the provision of "stationary" air layer would be contrary his goal of having an arrangement in which "the air in the air layer 3, 3' is used for heat recovery" and the directly contradicted by the disclosure in the second full paragraph, page 5 of the translation that:

In the illustrated exterior wall panels of a building the air from the air layers 3, 3' is heated by the lost heat escaping from the room and is pumped to a heat pump. The heat pump removes the lost heat from the air and feeds the cooled air back into the intermediate spaces 3, 3'.

Thus, rather than being stationary, the air in the air layer 3, 3' circulated to and from a heat pump. Accordingly, even if the above amendment are not entered, the rejections based on Saalfeld are simply not sustainable.

However, to advance prosecution, claim 9 has been amended to preclude the presence of insulation material layers on the walls as is the case for the insulation layers 2, 5, 5' of Saalfeld by the recitation that "stationary air layer is formed *filling* a space defined between facing sides of said front and rear masonry walls, said space being *otherwise* free of insulating materials," thus making it totally clear that, other than the stationary air layer, the space between the walls does not contain any insulating materials. Nothing in the disclosure of the Kotrotsios patent since he also utilizes insulating materials between his walls, not simply a static air space. Furthermore, it would not be obvious to combine the static air space teachings of the Kotrotsios patent with the arrangement of Saalfeld since it would preclude the extraction of heat from the air that is a key component of Saalfeld's concept.

In view of the foregoing, reconsideration and withdrawal of the outstanding rejections based on either Saalfeld or Saalfeld and Kotrotsios patent are in order and are hereby requested.

Therefore, in the absence of new and more relevant prior art being discovered, this application should now be in condition for allowance and action to that effect is requested. However, while it is believed that this application should now be in condition for allowance, in the event that any issues should remain, or any new issues arise, after consideration of this response which could be addressed through discussions with the undersigned, then the Examiner is requested to contact the undersigned by telephone for the purpose of resolving any such issue and thereby facilitating prompt approval of this application.

Respectfully submitted,

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DSS:kmm

vertical definition

ver·ti·cal (vər'ti kəl)

adjective

1. of, at, or in the vertex or zenith
2.
 - a. perpendicular, or at a right angle, to the plane of the horizon; upright, straight up or down, etc.
 - b. at a right angle to the plane of the supporting surface
3. at, or made up of elements at, different levels, as of industrial production and distribution or of social status
4. ANAT., ZOOL. of the vertex of the head
5. BIOL. in the direction in which the axis lies; lengthwise

Etymology: Fr < LL *verticalis* < L *vertex* (gen. *verticis*): see *vertex*

noun

1. a vertical line, plane, circle, etc.
2. upright position

Related Forms:

- **verticality** *ver'·ti·cal'·ty* (-kal'ə tē) **noun**
- **vertically** *ver'·ti·cally* **adverb**

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vertical synonyms

vertical

modif.

perpendicular, plumb, upright, upward, erect, on end, cocked up, straight up.

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